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Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

Chair: Mr. Rohan **Perera** (Sri Lanka)

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I. Introduction

1. Pursuant to General Assembly resolution 64/118 of 16 December 2009 and upon the recommendation of the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996, the Sixth Committee decided, at its 1st meeting, on 4 October 2010, to establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and to continue to discuss the item included in its agenda by the Assembly in its resolution 54/110 of 9 December 1999, in which the Assembly addressed the question of convening a high-level conference under the auspices of the United Nations.

2. At the same meeting, the Sixth Committee elected Mr. Rohan Perera (Sri Lanka) as Chair of the Working Group. It also decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. In keeping with its established practice, the Working Group decided that members of the Bureau of the Ad Hoc Committee would continue to act as Friends of the Chair during the meetings of the Working Group. Accordingly, Ms. Maria Telalian (Greece), Ms. Ana Cristina Rodríguez-Pineda (Guatemala) and Mr. Andi Xhoi (Albania) served as Friends of the Chair. Since Ms. Namira Nabil Negm (Egypt) was no longer available to serve in this capacity, the Group of African States nominated Mr. Dire David Tladi (South Africa) to join the Friends of the Chair. The Working Group expressed its appreciation for the valuable contribution of Ms. Negm to its work.

4. The Working Group had before it the report of the Ad Hoc Committee on its fourteenth session (A/65/37).[1] It also had before it the letter from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General, dated 1 September 2005 (A/60/329), and the letter dated 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Chair of the Sixth Committee (A/C.6/60/2).

II. Proceedings of the Working Group

5. The Working Group held two meetings, on 18 October and on 2 November 2010. It also held informal consultations on 20 and 21 October. At its 1st meeting, on 18 October, the Working Group adopted its work programme and decided to

[1] See also the reports of the Ad Hoc Committee on its sixth to thirteenth sessions: *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37 and Corr.1); ibid., *Fifty-eighth Session, Supplement No. 37* (A/58/37); ibid., *Fifty-ninth Session, Supplement No. 37* (A/59/37); ibid., *Sixtieth Session, Supplement No. 37* (A/60/37); ibid., *Sixty-first Session, Supplement No. 37* (A/61/37), ibid., *Sixty-second Session, Supplement No. 37* (A/62/37); ibid., *Sixty-third Session, Supplement No. 37* (A/63/37); and ibid., *Sixty-fourth Session, Supplement No. 37* (A/64/37). See also the reports of the Working Group established at the fifty-fifth to sixtieth sessions of the General Assembly (A/C.6/55/L.2, A/C.6/56/L.9, A/C.6/57/L.9, A/C.6/58/L.10, A/C.6/59/L.10 and A/C.6/60/L.6). Summaries of the oral reports of the Chair of the Working Group established at the sixty-first, sixty-second, sixty-third and sixty-fourth sessions are contained in documents A/C.6/61/SR.21, A/C.6/62/SR.16, A/C.6/63/SR.14 and A/C.6/64/SR.14, respectively.

proceed with discussions on the outstanding issues relating to the draft comprehensive convention on international terrorism and, thereafter, consider the question of convening a high-level conference under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Chair, together with the Coordinator of the draft comprehensive convention, Ms. Maria Telalian, also held several rounds of bilateral contacts with interested delegations on the outstanding issues relating to the draft comprehensive convention. Annex I contains the texts of the preamble and articles 1, 2 and 4 to 27 of the draft comprehensive convention, prepared by the Friends of the Chair, incorporating the various texts contained in annexes I, II and III to the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 at its sixth session (A/57/37), for discussion, taking into account developments in recent years. Annex II contains texts of written proposals in relation to the outstanding issues surrounding the draft comprehensive convention.

6. At its 2nd meeting, on 2 November, the Working Group received a report on the results of the bilateral contacts held during the current session. Annex III contains an informal summary of the exchange of views during the meetings of the Working Group and its informal consultations. The informal summary is for reference purposes only and not an official record of the proceedings.

III. Recommendation

7. At its 2nd meeting, on 2 November 2010, the Working Group decided to refer the consideration of the present report to the Sixth Committee.

Annex I

Text of preamble and articles 1 to 2 and 4 to 27 of the draft comprehensive convention, prepared by the Friends of the Chair*

The States Parties to the present Convention,

Recalling the existing international treaties relating to various aspects of the problem of international terrorism, in particular the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973, the International Convention against the Taking of Hostages, adopted in New York on 17 December 1979, the Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 26 October 1979, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, the International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997, the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999, the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005, the Amendment to the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 8 July 2005, the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at London on 14 October 2005, and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005,

Recalling also the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

* The text represents the stage of consideration reached at the 2010 session of the Working Group of the Sixth Committee. It incorporates the various texts contained in annexes I, II and III to the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 on its sixth session (A/57/37), for discussion, taking into account developments in recent years. It is understood that further consideration will be given to the texts in future discussions, including on outstanding issues. Editorial changes of a technical nature have been introduced in order to align the language of the draft text with the recently adopted counter-terrorism instruments negotiated in the context of the Ad Hoc Committee and the Sixth Committee. The article numbers in square brackets correspond to the numbering of the relevant articles in previous texts.

Recalling further the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 51/210 of 17 December 1996,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations, which endanger or take innocent lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Reaffirming their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize friendly relations among States and peoples and threaten the territorial integrity and security of States,

Recognizing that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the undermining of human rights, fundamental freedoms and the democratic bases of society,

Recognizing also that the financing, planning and inciting of terrorist acts are also contrary to the purposes and principles of the United Nations, and that it is the duty of the States Parties to bring to justice those who have participated in such acts,

Convinced that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is an essential element in the maintenance of international peace and security and the sovereignty and territorial integrity of States,

Noting that the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, done at New York on 31 January 1967, do not provide a basis for the protection of perpetrators of terrorist acts, and stressing the importance of the full compliance by the Parties to those instruments with the obligations embodied therein, including, in particular, the principle of non-refoulement,

Bearing in mind the necessity of respecting human rights and international humanitarian law in the fight against terrorism,

Realizing the need for a comprehensive convention on international terrorism,

Have resolved to take effective measures to prevent acts of terrorism and to ensure that perpetrators of terrorist acts do not escape prosecution and punishment by providing for their extradition or prosecution, and to that end have agreed as follows:

Article 1

For the purposes of the present Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

3. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewerage, energy, fuel, banking, communications, telecommunications and information networks.

4. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

5. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or

(c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss,

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of the present article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of the present article.

Article 4 [2 bis]

Where the present Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both the present Convention and the said treaty, the provisions of the latter shall prevail.

Article 5 [3]

The present Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 8 [6], paragraph 1 or 2, of the present Convention to exercise jurisdiction, except that the provisions of articles 10 [8] and 14 [12] to 18 [16] of the present Convention shall, as appropriate, apply in those cases.

Article 6 [4]

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of the present Convention;

(b) To make these offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 7 [5]

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the present Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 8 [6]

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 of the present Convention when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result in, within its territory, the commission of an offence set forth in article 2; or

(c) The offence is committed against a national of that State; or

(d) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(e) The offence is committed in an attempt to compel that State to do or to abstain from doing any act; or

(f) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to the present Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, the present Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 9 [7]

States Parties shall take appropriate measures, in conformity with the relevant provisions of national and international law, including international human rights law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence set forth in article 2 of the present Convention.

Article 10 [8]

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 of the present Convention by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences, including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2, in accordance with their domestic law, by exchanging accurate and verified information and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.

3. States Parties may exchange information through the International Criminal Police Organization (INTERPOL) or other international and regional organizations.

Article 11 [9]

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2 of the present Convention. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 of the present article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 12 [10]

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 of the present Convention may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b) above.

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 8 [6], paragraph 1 (c) or 2 (a), of the present Convention to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 8 [6], paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 13 [11]

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 8 [6] of the present Convention applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to

its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 14 [12]

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the present Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law and, in particular, the Standard Minimum Rules for the Treatment of Prisoners.

Article 15 [13]

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2 of the present Convention, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 11 [9] of the present Convention.

Article 16 [14]

None of the offences set forth in article 2 of the present Convention shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 17 [15]

Nothing in the present Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 of the present Convention or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 18 [16]

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under the present Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall, without delay, implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for the time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 19 [17]

1. The offences set forth in article 2 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of the present Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may, at its option, consider the present Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 8 [6], paragraphs 1 and 2, of the present Convention.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with the present Convention.

Article 20 [17 bis]

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or its applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 21 [20]

States Parties shall carry out their obligations under the present Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in the present Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by the law in force in that State Party.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may, at the time of signature, ratification, acceptance or approval of the present Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 of the present article with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may, at any time, withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. The present Convention shall be open for signature by all States from ... to ... at United Nations Headquarters in New York.

2. The present Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. The present Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. The present Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which such notification is received by the Secretary-General of the United Nations.

Article 27

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at New York this ... of ... two thousand and ....

Annex II

List of written proposals in relation to the outstanding issues surrounding the draft comprehensive convention[a]

	Symbol	*Subject*
Nicaragua	A/C.6/65/WG.2/DP.1	Text relating to article 2
Coordinator	A/62/37	Text relating to preamble and article 3 [18]
Friends of the Chairman	A/C.6/60/INF/1	Text relating to article 3 [18]
Friends of the Chairman	A/C.6/60/INF/2	Text relating to preamble
Argentina	A/61/37, annex II (A/AC.252/2006/WP.1)	Text relating to preamble amending document A/C.6/60/INF/2
Cuba	A/60/37, annex III (A/AC.252/2005/WP.2)	Text relating to article 2
Coordinator	A/57/37, annex IV	Text relating to article 3 [18]
Member States of the Organization of the Islamic Conference	A/57/37, annex IV	Text relating to article 3 [18]

Proposal submitted by Nicaragua (A/C.6/65/WG.2/DP.1)

Article 2 of the draft comprehensive convention on international terrorism

Add a paragraph 4 (e)

(e) Being in a position to control or direct effectively the actions of armed groups not belonging to the armed forces of the State but responding to it, orders, permits, or participates directly or indirectly in the planning, preparation, initiation or execution of any of the offences set forth in paragraphs 1, 2 or 3 of the present article in a manner incompatible with the purposes and principles of the Charter of the United Nations.

[a] It is understood that further consideration will be given to these written amendments and proposals, together with all other written and oral proposals, in future discussions, including on outstanding issues.

Text circulated by the Coordinator for discussion (A/62/37)

Text relating to the preamble and article 3 [18] of the draft comprehensive convention[b]

Preamble

Noting that the activities of military forces of States are governed by rules of international law outside the framework of the present Convention, and that the exclusion of certain actions from the coverage of the present Convention does not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws,

Article 3 [18]

1. Nothing in the present Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by the present Convention.

3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by the present Convention.

4. Nothing in the present article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws; acts which would amount to an offence as defined in article 2 of the present Convention remain punishable under such laws.

5. The present Convention is without prejudice to the rules of international law applicable in armed conflict, in particular those rules applicable to acts lawful under international humanitarian law.

Proposal to facilitate discussion by the Friends of the Chairman of the Working Group on measures to eliminate international terrorism (A/C.6/60/INF/1)

Proposed addition to article 3 [18] of the draft comprehensive convention on international terrorism

5. Nothing in this Convention makes acts unlawful which are governed by international humanitarian law and which are not unlawful under that law.

[b] This text represents the proposed elements of an overall package presented by the Coordinator in 2007 and contained in the annex to the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 on its eleventh session (see A/62/37, para. 14). It is understood that further consideration will be given to this proposal together with all other written and oral proposals, in future discussions, including on outstanding issues.

Proposal to facilitate discussion by the Friends of the Chairman of the Working Group on measures to eliminate international terrorism (A/C.6/60/INF/2)

Proposed preambular paragraph of the draft comprehensive convention on international terrorism

Reaffirming the right to self-determination of peoples in accordance with the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[1]

[1] General Assembly resolution 2625 (XXV), annex.

Proposal submitted by Argentina amending document A/C.6/60/INF/2 (A/61/37, annex II)

Proposed preambular paragraph of the draft comprehensive convention on international terrorism

Reaffirming the right to self-determination of peoples in accordance with the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples[1] and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

[1] General Assembly resolution 1514 (XV).

[2] General Assembly resolution 2625 (XXV), annex.

Proposal submitted by Cuba (A/60/37, annex III)

Draft comprehensive convention on international terrorism and draft international convention for the suppression of acts of nuclear terrorism

In article 2 of both draft conventions, add a new paragraph 4 (d) reading:

"Being in a position to control or direct effectively the actions of troops belonging to the armed forces of the State, orders, permits, or actively participates in the planning, preparation, initiation or execution of any of the offences set forth in paragraphs 1, 2 or 3 of the present article, in a manner incompatible with international law, including the Charter of the United Nations."

Text circulated by the Coordinator for discussion (A/57/37, annex IV)

Text relating to article 3 [18] of the draft comprehensive convention

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

Text proposed by the member States of the Organization of the Islamic Conference (A/57/37, annex IV)

Text relating to article 3 [18] of the draft comprehensive convention

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

2. The activities of the parties during an armed conflict, including in situations of foreign occupation, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are in conformity with international law, are not governed by this Convention.

4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

Annex III

Informal summaries by the Chair of the Working Group concerning the draft comprehensive convention and the question of the convening of a high-level conference

A. Draft comprehensive convention on international terrorism

1. Summary of the statement by the Chair

1. During the informal consultations, held on 20 October, discussions on the outstanding issues relating to the draft comprehensive convention proceeded with a focus on the elements of an overall package, presented by the Coordinator in 2007 (A/62/37). In this context, the Chair recalled that draft article 2 and draft article 18 were closely linked, the text of the former was inclusionary and prescriptive, and the text of the latter was exclusionary and formulated as a "without prejudice" and applicable law clause. To accentuate this linkage, it was recalled that the Coordinator had proposed, during the 2009 Working Group discussions, that draft article 18 should eventually be placed closer to draft article 2, thus becoming draft article 3. Draft article 18 attempted to translate the concerns and various viewpoints expressed by delegations into a legal text against the background of the law as it currently exists.

2. The Chair also recalled that it was generally understood that draft article 18 should be read and construed as an integral whole. The original exclusionary text contained in the International Convention for the Suppression of Terrorist Bombings[a] was carefully drafted and reflected a delicate balance, the integrity of which needed to be preserved. It had been considered that such a result would be achieved by adding on language that clarified the overall objective of the exclusionary provisions as applicable law clauses, rather than beginning anew. Accordingly, paragraph 1 of draft article 18 generally safeguarded other rights, obligations and responsibilities of States, peoples and individuals under international law, including the right to self-determination of peoples as enshrined in the Charter of the United Nations and international humanitarian law. Paragraph 5, which formed a new additional element, should be read together with paragraph 1.

3. Since the activities of armed forces during armed conflict were regulated by an entirely different and well-established legal regime, it had been necessary to carve out such regime from the scope of the draft convention. During the negotiations of various counter-terrorism instruments in the Ad Hoc Committee and the Working Group, practical questions on how to address activities of armed forces during armed conflict and activities of military forces of a State during peacetime had been raised. It was generally understood that the specificity of these activities could not be adequately covered by the general safeguards clause in paragraph 1. This was the rationale behind paragraph 2 of draft article 18. The relevant commentaries to the 1949 Geneva Conventions and 1977 Additional Protocols offered an understanding of the meaning of the terms "armed forces" and "armed conflict" within the context of the developments in international humanitarian law. International humanitarian law governs these activities, including by prohibiting certain conduct during armed conflict and criminalizing acts committed in breach of such law.

[a] United Nations, *Treaty Series*, vol. 2149, No. 37517, p. 256.

4. The Chair also recalled that paragraphs 3 and 4 of draft article 18 excluded the activities undertaken by the military forces of a State in the exercise of their official duties. Whereas "armed forces" and "armed conflict" were well understood in and governed by international humanitarian law, the term "military forces of a State" was not defined; hence the reason for defining it in the draft convention. To balance the imperative that the legitimate activities of the military forces of a State were excluded from the scope of the draft convention and the importance of the need to safeguard against impunity, specific qualifiers for such exclusion had been provided, and it was understood that other laws would apply. To better capture the general orientation of the balance that no impunity was intended, the elements of the overall package that were included offered further clarity by way of an additional preambular paragraph and some language to paragraph 4 of draft article 18. International law and national law were summoned to harness the endeavour to address concerns about possible impunity:

(a) The additional preambular paragraph, based on a similar one in the International Convention for the Suppression of Acts of Nuclear Terrorism,[b] noted that the activities of military forces of States were governed by rules of international law outside the framework of the Convention and that the exclusion of certain actions from the coverage of the Convention did not condone or make lawful otherwise unlawful acts, or preclude prosecution under other laws;

(b) The additional phrase in paragraph 4 of draft article 18 that "acts which would amount to an offence as defined in article 2 of this Convention remain punishable under such laws" both signalled the purposive desire to address any possible inference of impunity and sought to preserve the integrity of the applicable laws.

5. With regard to paragraph 5 of draft article 18, the Chair stated that it sought to offer further clarity to the general safeguards contained in paragraph 1 as read with paragraph 2, which projected a clear demarcation that had sought to be made between the draft convention and activities governed by international humanitarian law.

6. While the Chair stressed that draft article 2, read in conjunction with draft article 18, constituted core provisions of the draft instrument, he reminded delegations that the convention also contained additional treaty obligations for States, for example, the specific obligations of prevention for States parties provided in draft article 8, and the obligations to cooperate, in particular in the exchange of information.

2. Comments of delegations

7. Delegations made statements concerning the draft comprehensive convention on international terrorism during the meeting of the Working Group on 18 October and during informal consultations held on 20 and 21 October 2010.

8. Delegations reiterated the importance that they attached to the early conclusion of the draft comprehensive convention and stressed that, with the necessary political will, the remaining outstanding issues could be successfully resolved. It was also pointed out that there were many elements of principle on which there was common

[b] United Nations, *Treaty Series*, vol. 2445, No. 44004, p. 89.

ground, including: (a) that the draft convention, as a law enforcement instrument, would supplement and strengthen the existing legal framework and enhance cooperation between States in their counter-terrorism efforts; (b) that the convention should not affect other rights, obligations and responsibilities of States, peoples and individuals under international law, including the Charter of the United Nations and international humanitarian law; (c) that activities of military forces of a State in the exercise of their official duties fell outside the scope of the convention while also providing against impunity should such forces commit such crimes; and (d) that the sanctity of international humanitarian law was not to be prejudiced and that the convention would not make lawful acts otherwise unlawful under that law. Several delegations stressed the need to conclude work on the draft comprehensive convention at the current session. In this context, references were made to the 2005 World Summit Outcome (resolution 60/1), the United Nations Global Counter-Terrorism Strategy (resolution 60/288), its recent review by the General Assembly (resolution 64/297) and to the statement made by the President of the Security Council on 27 September 2010 (S/PRST/2010/19).

9. As to the outstanding issues surrounding the draft comprehensive convention, several delegations expressed their full support for the Coordinator's 2007 package proposal and recalled that the draft convention was a law enforcement instrument, dealing with individual criminal responsibility based on an extradite or prosecute regime. The 2007 proposal provided useful clarifications with respect to the relationship between the draft convention and international humanitarian law and ensured that the substance and integrity of that body of law was upheld. Some delegations further emphasized that the 2007 proposal, albeit not perfect, constituted a carefully balanced compromise text that effectively sought to address the various concerns raised throughout the negotiations. Delegations that were not ready to conclude the draft convention on the basis of the 2007 proposal were called upon to clarify their position in order to move the process forward. Similarly, those delegations that had objected to the Coordinator's 2002 proposal were requested to signal their acceptance or rejection of the 2007 proposal.

10. Some other delegations expressed the view that the 2007 proposal merited serious consideration and should constitute the basis for further negotiation. While some delegations stated their willingness to continue to consider the Coordinator's 2007 proposal, they reiterated their preference for the earlier proposals relating to draft article 18.

11. In this context, at one level, some delegations reiterated the need for the comprehensive convention to contain a legal definition of terrorism, to distinguish it from the legitimate struggle of peoples in the exercise of their right to self-determination from foreign occupation or colonial domination. Some delegations also expressed the view that the convention should address all forms of terrorism, including State terrorism, and that it should cover acts by armed forces not covered by international humanitarian law. In this context, comments were made regarding previous proposals to add language to draft article 2 (see annex II).

12. At another level, it was also pointed out that any compromise text had to be predicated on the principle that no cause or grievance could justify terrorism in any form. Reference was also made to existing language, which, it was noted, had gained the support of the vast majority of States, concerning military activities of States that had already been agreed upon in previously concluded counter-terrorism

instruments, including the 1997 International Convention for the Suppression of Terrorist Bombings and the recently adopted Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft.[c] It was recalled that this language did not provide impunity for military forces, but emphasized the criminal law nature of the instrument and recognized that other legal regimes governed such activities.

13. Some delegations were of the view that the remaining outstanding issues could be addressed in an accompanying resolution and invited the Coordinator to prepare such a document, for the Working Group's consideration. It was recalled that several precedents existed to support such an approach and that it would be an effective way of dealing with politically difficult issues. However, the view was also expressed that it would be premature to embark on such an undertaking prior to finding a solution to the outstanding issues relating to the draft convention, including on draft article 18.

14. The view was also expressed that, despite the efforts to find consensus, the odds of concluding the draft convention, whether on the basis of the Coordinator's proposal of 2002 or 2007, were unlikely to be improved unless the process itself was placed in a larger context. Accordingly, it was suggested that there was a need to engage in a two-step process, entailing a foreseeable, binding and transparent understanding that would involve, as a first step, the adoption of the draft convention based on the Coordinator's 2007 proposal, and subsequently, as a second step, the convening of a high-level conference. While some delegations welcomed the proposal and considered that it constituted a constructive approach and merited further consideration, some other delegations, while being open-minded, reiterated their view that there was no linkage between the two items and that they should be considered on their own merits.

15. In her statement and reply to the various concerns raised by delegations, the Coordinator reiterated the explanations and clarifications she had previously provided and referred to the reports of the Ad Hoc Committee in 2007 (A/62/37), 2008 (A/63/37), 2009 (A/64/37) and 2010 (A/65/37), and the reports of the Working Group of the Sixth Committee in 2008 (A/C.6/63/SR.14) and 2009 (A/C.6/64/SR.14) (see also section 3 below).

3. Report of the Coordinator on the bilateral contacts at the current session

16. In her statement to the Working Group on 2 November 2010, the Coordinator, Ms. Maria Telalian (Greece), recalled that the purpose of the bilateral contacts that had been held in the margins of the Sixth Committee had been to obtain a better appreciation of the views of delegations, particularly on the outstanding issues relating to the draft comprehensive convention, in light of the elements of an overall package that were made in 2007. She had been especially keen to ascertain whether delegations were in a position to move the process forward towards the finalization of the draft convention.

17. In the Coordinator's overall assessment of her discussions with delegations, there continued to be an interest in completing the draft convention. It was her firm

[c] Adopted on 10 September 2010 by the International Conference on Air Law (Diplomatic Conference on Aviation Security).

belief that a substantial group of members would be satisfied to proceed on the basis of the 2007 elements of an overall package, which, in their view, constituted a viable and legally sound solution to concluding the draft convention. The Coordinator further noted that another group of States, while willing to be engaged in the discussions on the basis of the 2007 elements, reserved its position in the conviction that the earlier proposals made, particularly in 2002, best reflected how their concerns could be overcome. Within this group, one side wanted more time for reflection, while another, before committing itself, wanted to first hear whether those who did not find the 2002 proposal of the Coordinator a suitable compromise, would be willing to accept the 2007 proposal as constituting elements of an overall package. There were also a few States that sought to reopen some issues relating to the scope of application of the convention depending on the final outcome of the negotiations on the 2007 elements of an overall package.

18. The Coordinator recalled that in all the various positions the main concerns had revolved around three issues: (a) the right of peoples to self-determination under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law; (b) activities of armed forces in armed conflict; and (c) activities of military forces of a State in peace time, also taking into account related concerns about "State terrorism". In the overall scheme of the draft convention, draft article 3 [formerly draft article 18] addressed all these aspects and had thus been the central focus of the discussions.

19. Several attempts had been made to clarify the rationale for the 2007 elements of an overall package since it was first presented. These elements, which consisted of a preamble, an addition to article 3 [18], paragraph 4, and a new paragraph 5 of the same article, had been presented following intensive and extensive consultations, in the effort to capture the various concerns of delegations. Any attempt to slice the elements would result in affecting the overall balance that had sought to be achieved. The Coordinator stressed that it was neither in the spirit of the proposal nor in its underlying motivation that the elements would be opened up for delegations to pick and choose which parts they found favourable and to discard those they disliked. The elements were conceived as part of an overall package.

20. The Coordinator stated that the proposed elements were drafted in such a way as to project principles that clarified the relationship between the draft convention and other legal regimes, in particular international humanitarian law, and to safeguard the application of such regimes. The draft convention would not exist in a legal vacuum; it would operate in the context of an overall international legal framework and against the background of general international law.

21. In this context, delegations were reminded that the interpretation and application of the convention were the primary responsibility of the parties to the convention and that, ultimately, it would be for them and consequently their judicial authorities to make interpretations in the light of the specific circumstances in each case in accordance with well-established rules of treaty interpretation.

22. The Coordinator took the opportunity to recall a number of considerations.

(a) An appreciation of draft article 3 [18], whose constituent elements had to be read as a whole, would be incomplete without relating it to the other articles of the draft convention, in particular draft article 2, which provided the criminal law definition of acts of terrorism. The Coordinator reiterated that the draft convention

was a criminal law enforcement instrument intended to assure individual criminal responsibility, informed by enhanced cooperation on the basis of an *aut dedere aut judicare* regime. The core rationale for focusing on the individual had been that other fields of law, in particular the Charter of the United Nations, international humanitarian law and the law relating to the responsibility of States for internationally wrongful acts, adequately covered the obligations of States in situations where acts of violence were perpetrated by States or their agents and that such laws continued to apply to situations pertaining to particular cases.

(b) Paragraph 1 of draft article 2 contained two key terms, namely "unlawful" conduct by "any person", which were decisive in understanding the scope of the convention *ratione personae*. It was explained that in reading draft article 2, together with draft article 3 [18], the latter only carved out from the scope of the convention certain activities that were regulated by other fields of law. Since the draft comprehensive convention would be implemented in the context of an overall international legal framework, the importance of preserving the integrity of those other fields of law was an issue which had been recognized quite early in life of the Ad Hoc Committee.

(c) It was recalled that, paragraph 1 of draft article 3 [18], which set out the overarching principles that underpinned what would be excluded from the scope of the draft convention, including any concerns relating to the right of peoples to self-determination, had not been contentious. The paragraph contained negotiated language which built upon the text of the Terrorist Bombings Convention and did not affect the *jus ad bellum* and *jus in bello*. The Coordinator emphasized that there could not be a clearer statement of principle than that contained in the paragraph, which also provided the context of appreciating the other paragraphs of draft article 3 [18] that dealt with the relationship between the convention and international humanitarian law.

(d) Paragraph 2 contained the key terms "armed forces" and "armed conflict", which were terms governed by international humanitarian law and had, in that context, taken on very specific meanings. By excluding activities of armed forces, there had always been the clear understanding that such activities were governed by other rules of international law. The draft comprehensive convention, or the earlier conventions, did not attempt to rectify any perceived flaws or problems in such other fields of law, and in particular the complexity of problems that existed in international humanitarian law. The Coordinator noted however that international humanitarian law provided principles that offered guidance to States in situations of armed conflict, many of which had been generally accepted, including the principle of the distinction of civilians and non-combatants from combatants, the principle of proportionality, and the principle of prohibition to employ means and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

(e) The Coordinator observed that in practically all jurisdictions, military forces of a State were subject to codes of conduct, which might include trial by military courts, separate from their civilian counterparts. Under military law, jurisdiction followed the soldier. It was further recognized that when such forces were engaged in peacekeeping operations, different rules of engagement would apply. She recalled that it was these factors that had informed the elaboration of paragraph 3 and similar provisions in earlier instruments. It had always been understood that paragraph 3 of draft article 3 [18] intended to cover both procedural

and substantive aspects and that the phrase "inasmuch as they are governed by other rules of international law" encompassed conduct that was lawful or unlawful under international law.

(f) Paragraph 3, as read with paragraph 4, did not make lawful otherwise unlawful acts. The Coordinator emphasized that such acts, if unlawful did not preclude prosecution under other laws. In order to accentuate further that no impunity was intended and to remove any doubts as to the scope of paragraph 3, as read with paragraph 4, the addition to paragraph 4 as suggested in the elements, together with the additional preamble, sought to stress that there would be an inner core of crimes that should remain punishable irrespective of the regime that would apply.

(g) Paragraph 5 sought to provide a clear delineation between those activities that were governed by international humanitarian law and those covered by the draft convention. The Coordinator observed that the essential aspect of this element was the principle that international humanitarian law was not prejudiced by the present convention nor was the development of that law restrained by the latter. Paragraph 5 consisted of a general "without prejudice" statement and a clarification regarding rules of international law applicable for certain acts which would be lawful under international humanitarian law. The term "lawful" in this context should, from an international humanitarian law perspective, properly be understood with its double negative connotation, i.e., "not unlawful acts" since international humanitarian law did not in a literal sense define which acts would be "lawful", but which acts would be prohibited. However, in view of the need to distinguish those acts that are "unlawful" under paragraph 1 of draft article 2, the term "lawful" in paragraph 5 was used as being more appropriate in the circumstances. In this context, the Coordinator reiterated that the draft convention was not intended to impose international humanitarian law standards on States that would become parties to it if they had not been bound by such standards. The draft convention was neither intended to supersede such obligations, where they already existed, nor to modify them.

(h) It was also recalled that during the discussions there had been a general agreement that civilians would under no circumstances constitute a legitimate target of the use of force, whether during armed conflict or during peacetime.

(i) The Coordinator further noted that the need to address the obligations of States in the elaboration of the draft comprehensive convention had not been avoided. She recalled that the State had an obligation, for instance: (a) to prevent and counter preparations of terrorist activities in its territory; (b) to prohibit activities by persons or groups of persons that encourage, instigate, organize, knowingly finance or engage in the commission of terrorist activities; (c) to prohibit the establishment and operation of installations and training camps for terrorist activities; and (d) to cooperate with each other in the prevention of terrorist offences. These obligations tracked the provisions of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), 24 October 1970), which the International Court of Justice in the *Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo* v. *Uganda) (Judgement, I.C.J. Reports 2005*, at paragraph 162), had said were declaratory of customary international law.

23. In moving forward, the Coordinator stressed that it would be necessary to capture a number of issues in an accompanying resolution. She recalled that several delegations had commented on the need to outline the elements of such a resolution. Recognizing that it might not be the appropriate time to negotiate such a text, the Coordinator nevertheless suggested, following comments from delegations, that it could take into account some of the following considerations:

(a) It would be necessary for the General Assembly to recall its resolution 49/60 of 9 December 1994, by which it adopted the Declaration on Measures to Eliminate International Terrorism, and resolutions 51/210 of 17 December 1996 and 53/108 of 8 December 1998, which informed the basis of work.

(b) Consideration might be given to the possibility of recalling also the Declaration on Friendly Relations in accordance with the Charter of the United Nations, the importance of which in promoting friendly relations among States had been well recognized.

(c) Although the focus of the draft convention was on individual criminal responsibility, the duties of States were equally important. Accordingly, it was suggested that it might be necessary to give consideration to the possibility of reaffirming the duty of every State to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when these acts involved a threat or use of force. The Coordinator reiterated that this was the language of the Declaration on Friendly Relations and that the International Court of Justice in the *Case concerning armed activities on the territory of the Congo* had noted that this duty constituted an obligation under customary international law.

(d) It was also suggested that it might be useful to reaffirm, in the context of combating international terrorism, the importance of maintaining the integrity of international humanitarian law, as well as the importance of respecting human rights in countering terrorism.

(e) The Coordinator further noted that it might also be necessary to capture in the accompanying resolution the element of convening the high-level conference under the auspices of the United Nations and recalled the proposal made by Switzerland of a two-step process concerning the draft convention and the high-level conference (see paragraph 14 above).

24. In concluding her statement, the Coordinator also recalled that the possibility of changing the name of the convention from "comprehensive convention" to "United Nations Convention on the prevention and suppression of international terrorism" would be an important element for consideration in moving forward.

B. Question of the convening of a high-level conference

25. Delegations made statements concerning the question of convening a high-level conference under the auspices of the United Nations during the meeting of the Working Group on 18 October and during the informal consultations held on 21 October 2010. The sponsor delegation of Egypt recalled the origins and reasons behind its proposal to convene a high-level conference. It explained that a plan of action was needed in order to effectively address all aspects of terrorism in a

coordinated and coherent manner. Such a plan of action would strengthen efforts undertaken at the international, regional and national levels. The conference would provide a forum to address all the issues related to the fight against terrorism, including the conditions conducive to its spread, and could contribute to the discussion on the definition of terrorism. It also reiterated that the question should be considered on its own merit, expeditiously, and should not be linked to the conclusion of the draft comprehensive convention. The sponsor delegation further recalled that the proposal had been endorsed by the Movement of Non-Aligned Countries, the Organization of the Islamic Conference, the African Union and the League of Arab States. It also recalled that both the 2005 World Summit Outcome and the United Nations Global Counter-Terrorism Strategy acknowledged that the question of convening a high-level conference could be considered.

26. Some delegations reiterated their support for the proposal by the Egyptian delegation and expressed their view that the convening of a high-level conference and the conclusion of the draft convention were not mutually exclusive, but should be considered in parallel. The conference could facilitate the negotiations on the draft convention and mobilize the necessary political will to finalize it, as well as address broader issues regarding international terrorism than those dealt with in the draft convention. Some other delegations, while supporting the convening of the conference in principle, questioned its timing. Some delegations reiterated their position that the conference should be discussed only following agreement on the draft comprehensive convention, which should be the focus of the Working Group.